



## Frequently Asked Questions About the H-1B Classification

1. **A. What is an H-1B?**  
**Q.** The H-1B classification is for a temporary worker in a “Specialty Occupation.” A specialty occupation is an occupation that requires a) theoretical and practical application of a body of highly specialized knowledge and, b) attainment of a bachelor’s or higher degree in the specific specialty -- or its equivalent -- as a minimum for entry into the occupation in the U.S.
2. **A. Who applies for the H-1B? Can I apply for myself?**  
**Q.** The employer is responsible submitting the H-1B petition that names the employee and describes the specific job for which the employee is being hired. You may not apply on your own behalf.
3. **A. Who pays the application fees?**  
**Q.** Generally, it is the responsibility of the employer to pay the costs of the H-1B petition. However, some costs can be passed on to the employee.
4. **A. How long does it take to apply for an H-1B?**  
**Q.** Petitioning for H-1B classification is a multi-step process that can take as long as four to six months, depending on the processing times of the government agencies involved at various stages; namely, the U.S. Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS). A “Premium Processing” service is available for a \$1,000 fee that will drastically reduce the USCIS processing time.
5. **A. Are there many steps in the process?**  
**Q.** Yes. The process begins with an offer of employment, if the employee is not already working for the employer, and gathering a great deal of information about the job and about the employee (e.g., educational documents, immigration history, etc.). The employer is then required to submit a Prevailing Wage Determination request to a local office of the Department of Labor, a Labor Condition Application to the federal Department of Labor office and, finally, the H-1B petition to the USCIS.
6. **A. Will I need a lawyer?**  
**Q.** Because the H-1B petition process is complex, and because the consequences of errors can be severe, the petition must be prepared by someone who specializes in H-1B processing. In most cases, that means a immigration lawyer. However, some companies – and many colleges and universities – have immigration experts on staff who process H-1B petitions for the company or institution.
7. **A. How long may I hold H-1B status?**  
**Q.** An individual may hold H-1B status for total of six years. The H-1B can be approved for no more than three years at a time. Additionally, an individual who departs the U.S. after holding H-1B status will become eligible for an additional six years of H-1B status if they remain outside the U.S. for at least one year. In certain circumstances individuals may be eligible for an extension of the H-1B classification beyond six years if they have an application for U.S. permanent residence pending.
8. **A. Can I obtain H-1B approval to work at part-time job?**  
**Q.** Yes. While many employers are reluctant to go through the lengthy, complex, expensive H-1B approval process for part-time positions, it is permitted. When petitioning for part-time employment, the employer must be specific about the number of hours per week that you will work. You may not work more than that number of hours without applying for new H-1B authorization.
9. **A. Is it possible to be approved to work for two or more employers at the same time under H-1B status?**  
**Q.** Yes. However, each employer must submit a separate H-1B petition before you may begin working for that particular employer.
10. **A. May I study while in H-1B status?**  
**Q.** Yes. As long as you continue working for your employer, fulfilling all the duties as outlined in the H-1B petition, you may also study. If you are going to leave the job to go back to school full-time in the U.S., you must first apply for a change of status to F-1 or another status that permits you to study.
11. **A. What is the H-1B Cap?**  
**Q.** In order to safeguard jobs for U.S. citizens and permanent residents, the U.S. Congress designates an annual limit (or “cap”) of nonimmigrant specialty workers that can be hired during each federal fiscal year (FY), which begins annually on October 1<sup>st</sup>. The current annual H-1B cap was 65,000.
12. **A. Exceptions to the Cap**  
**Q.** Not every H-1B applicant is subject to the cap. The cap does not apply to applicants filing H-1B visas through institutions of higher education, and affiliated nonprofit research organizations. Physicians taking jobs under certain state and federal government agency waivers based on serving underserved communities are exempt from the H-1B cap. In addition, the cap does not apply when filing for amendments and extensions.
13. **A. What is the special allotment of H-1Bs for graduates of U.S. institutions?**  
**Q.** In addition to the cap of 65,000, the USCIS will also approve 20,000 H-1Bs for individuals who have earned a master’s degree or higher from a U.S. institution.
14. **A. What about dependents?**  
**Q.** The spouse and minor children (under the age of 21) of H-1B specialty workers may be eligible for H-4 dependent status, which permits them to accompany or remain with the H-1B worker in the U.S. H-4 dependents may study full or part-time, but do not qualify for any type of work authorization.

15. **A. Are there other types of employment classifications I should know about?**

**Q.** The following classifications are, primarily, employment-based categories that you might consider if they pertain to your situation. Further information and consultation is necessary to determine if you qualify.

TN	Professionals under the North America Free Trade Agreement
E-3	Australian Specialty Occupation Workers
H-1B	Under the Singapore and Chile Free Trade Agreement
J-1	Exchange Visitor
O-1	Workers of extraordinary ability
L-1	Intracompany transferee
R-1	Religious Worker
A	Employees of Foreign Governments on Official Business
G	Representatives to, and employees of, international organizations
E	Treaty Trader or Treaty Investor
P	Performing artist or athlete

16. **A. What are the other H categories?**

**Q.** The other H categories include:

H-1B2	Workers on DOD research project
H-1B3	Fashion model of distinguished merit and ability
H-1C	Registered nurses under the Nursing Relief for Disadvantaged Areas Act
H-2A	Temporary or seasonal agricultural workers
H-2B	Non-agricultural workers seasonal workers
H-3	Participants in a training program

17. **A. Am I obliged to stay with the company for the length of the H-1B approval?**

**Q.** No, you are not obliged to remain with the company for any length of time. However, if you decide to resign from your position prior to the end date of the H-1B approval period, you need to plan very carefully to ensure you do not violate your immigration status. You must depart the U.S. or submit and application to change your immigration status *prior* to your last day of employment.

18. **A. Is the employer obliged to keep me employed for the length of the H-1B approval period?**

**Q.** No. The employer may terminate your position for any reason that is legal under other pertinent state and federal laws. If they do so, the *are* obliged to offer you the cost of transportation back to your home country.

19. **A. Is the employer required to sponsor me for the H-1B?**

**Q.** No. Employers are not obliged to petition for H-1B status for non-immigrant workers. They can require that you have authorization to work in the U.S. as a condition of hiring you. Likewise, if you begin working for the employer under another type of work authorization (e.g., F-1 Optional Practical Training) that later expires, the employer may choose to discontinue your employment and replace you with someone who is authorized to work in the U.S.

20. **A. Is H-1B the same as U.S. permanent residence (green card)?**

**Q.** H-1B status is a nonimmigrant visa, used to hire employees in a temporary category, which can be extended for a maximum of six years. H-1B status is not lawful permanent residence in the U.S., nor does it guarantee that you will be able to obtain permanent residence (i.e., a "green card").

21. **A. Can I obtain H-1B status for a volunteer job?**

**Q.** No. This classification is for paid employment purposes only. Volunteering is not considered employment.

22. **A. Does the employer have to prove that there were no qualified Americans available for the position?**

**Q.** No. The employer must simply show that the job itself qualifies as a "specialty occupation" and that the employee qualify for the job. Part of the petition process requires the employer to post information about the job in an effort to encourage U.S. citizens and permanent residents to apply for the job, if interested.

23. **A. Can I travel in H-1B status?**

**Q.** Yes, provided you remain employed and are maintaining valid H-1B status and have all of the appropriate immigration documentation.

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